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►B ►M1 REGULATION (EU) No 19/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 January 2013

implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Trade Agreement between the European Union and its Member States, of the one part, and Columbia, Peru and Ecuador, of the other part ◄

(OJ L 17, 19.1.2013, p. 1)

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REGULATION (EU) No 19/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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CHAPTER I

SAFEGUARD PROVISIONS

Article 1

Definitions

For the purposes of this Regulation:

(a) ‘product’ means a good originating in the Union or in ►M1 Colombia, Ecuador or Peru ◄. A product subject to an investigation may cover one or several tariff lines or a sub-segment thereof depending on the specific market circumstances, or any product segmentation commonly applied in the Union industry;

(b) ‘interested parties’ means parties affected by the imports of the product in question;

(c) ‘Union industry’ means the Union producers as a whole of the like or directly competitive products, operating within the territory of the Union, Union producers whose collective output of the like or directly competitive products constitutes a major proportion of the total Union production of those products, or, where a like or a directly competitive product is only one of several products that are made by the Union producers, the specific operations that are involved in the production of the like or directly competitive product;

(d) ‘serious injury’ means a significant overall impairment;

(e) ‘threat of serious injury’ means serious injury that is clearly imminent;

(f) ‘serious deterioration’ means significant disturbances in a sector or in Union industry;

(g) ‘threat of serious deterioration’ means significant disturbances that are clearly imminent;

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(h) ‘transitional period’ means 10 years from the respective date of application of the Agreement for products for which the Tariff Elimination Schedules for goods originating in Colombia, Ecuador or Peru, as set out in Subsections 1, 2 and 3 of Section B of Appendix 1 (Elimination of Customs Duties) of Annex I to the Agreement (Tariff Elimination Schedules), provide for a tariff elimination period of less than 10 years, or the tariff elimination period plus three years for products for which those Tariff Elimination Schedules provide for a tariff elimination period of 10 or more years; the transitional period shall be applicable to Ecuador from the date of application of the Agreement.

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A determination of the existence of a threat of serious injury within the meaning of point (e) of the first paragraph shall be based on verifiable facts and not merely on an allegation, a conjecture or a remote possibility. In order to determine the existence of a threat of serious injury, forecasts, estimations and analyses made on the basis of factors referred to in Article 5(5), shall, inter alia, be taken into account.

Article 2

Principles

1. A safeguard measure may be imposed in accordance with this Regulation where a product originating in ►**M1** Colombia, Ecuador or Peru ◄ is, as a result of tariff concessions on that product under the Agreement, imported into the Union in such increased quantities, in absolute terms or relative to Union production, and under such conditions as to cause or threaten to cause serious injury to the Union industry.

2. A safeguard measure may take one of the following forms:

(a) a suspension of a further reduction of the rate of customs duty on the product concerned provided for in the Tariff Elimination Schedule;

(b) an increase in the rate of customs duty on the product concerned to a level which does not exceed the lesser of:

— the most-favoured-nation ('MFN') applied rate of customs duty on the product in effect at the time the measure is taken, or

— the base rate as specified in the Tariff Elimination Schedule.

Article 3

Monitoring

1. The Commission shall monitor the evolution of import statistics of bananas from ►**M1** Colombia, Ecuador and Peru ◄. For that purpose, it shall cooperate and exchange data on a regular basis with Member States and the Union industry.

2. Upon a duly justified request by the industries concerned, the Commission may consider extending the scope of the monitoring to other sectors.

3. The Commission shall present an annual monitoring report to the European Parliament and to the Council on updated statistics on imports from ►**M1** Colombia, Ecuador and Peru ◄ of bananas and those sectors to which monitoring has been extended.

4. The Commission shall monitor the observance by ►**M1** Colombia, Ecuador and Peru ◄ of the social and environmental standards laid down in Title IX of the Agreement.

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Article 4

Initiation of proceedings

1. A proceeding shall be initiated upon request by a Member State, by any legal person or any association not having legal personality acting on behalf of the Union industry, or on the Commission's own initiative if it is apparent to the Commission that there is sufficient prima facie evidence, as determined on the basis of factors referred to in Article 5(5), to justify such initiation.

2. The request to initiate a proceeding shall contain evidence that the conditions for imposing the safeguard measure set out in Article 2(1) are met. The request shall generally contain the following information: the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

3. A proceeding may also be initiated in the event that there is a surge of imports concentrated in one or several Member States, or outermost regions, provided that there is sufficient prima facie evidence that the conditions for initiation are met, in accordance with Article 5(5).

4. A Member State shall inform the Commission if trends in imports from ►**M1** Colombia, Ecuador or Peru ◄ appear to call for safeguard measures. That information shall include the evidence available in accordance with Article 5(5).

5. The Commission shall provide that information to the Member States when it receives a request to initiate a proceeding or when it considers initiation of a proceeding to be appropriate on its own initiative pursuant to paragraph 1.

6. Where it is apparent that there is sufficient prima facie evidence in accordance with Article 5(5) to justify the initiation of a proceeding the Commission shall initiate proceedings and shall publish a notice thereof in the *Official Journal of the European Union*. Initiation shall take place within one month of receipt by the Commission of the request or information pursuant to paragraph 1.

7. The notice referred to in paragraph 6 shall:

(a) give a summary of the information received, and require that all relevant information be communicated to the Commission;

(b) state the period within which interested parties may make known their views in writing and submit information, if such views and information are to be taken into account during the proceeding;

(c) state the period within which interested parties may apply to be heard orally by the Commission in accordance with Article 5(9).

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Article 5

Investigations

1. Following the initiation of the proceeding, the Commission shall commence an investigation. The period as set out in paragraph 3 shall start on the day the decision to initiate the investigation is published in the *Official Journal of the European Union*.

2. The Commission may request Member States to supply information and Member States shall take whatever steps are necessary in order to give effect to any such request. If that information is of general interest and is not confidential within the meaning of Article 12, it shall be added to the non-confidential files as provided for in paragraph 8 of this Article.

3. The investigation shall, where possible, be concluded within six months of its initiation. That time limit may be extended by a further period of three months in exceptional circumstances such as the involvement of an unusually high number of interested parties or complex market situations. The Commission shall notify all interested parties of any such extension and explain the reasons therefor.

4. The Commission shall seek all information it considers necessary to make a determination with regard to the conditions set out in Article 2(1), and, shall, where appropriate, endeavour to verify that information.

5. In the investigation, the Commission shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the Union industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment. This list is not exhaustive and other relevant factors may also be taken into consideration by the Commission for its determination of the existence of serious injury or threat of serious injury, such as stocks, prices, return on capital employed, cash flow, and other factors which are causing or may have caused serious injury, or threaten to cause serious injury to the Union industry.

6. Interested parties who have submitted information pursuant to Article 4(7)(b) and representatives of ►M1 Colombia, Ecuador or Peru ◄ may, upon written request, inspect all information made available to the Commission in connection with the investigation other than internal documents prepared by the Union authorities or those of the Member States, provided that that information is relevant to the presentation of their case and not confidential within the meaning of Article 12 and that it is used by the Commission in the investigation. Interested parties who have submitted information may communicate their views on the information to the Commission. Where there is sufficient prima facie evidence in support of those views, the Commission shall take them into consideration.

7. The Commission shall ensure that all data and statistics which are used for the investigation are available, comprehensible, transparent and verifiable.

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8. The Commission shall, as soon as the necessary technical framework is in place, ensure password-protected online access to the non-confidential file, which it shall manage and through which all information which is relevant and is not confidential within the meaning of Article 12 shall be disseminated. Interested parties, Member States and the European Parliament shall be granted access to that online platform.

9. The Commission shall hear interested parties, in particular where they have made a written application within the period laid down in the notice published in the *Official Journal of the European Union*, showing that they are actually likely to be affected by the outcome of the investigation and that there are special reasons for them to be heard orally.

The Commission shall hear interested parties on further occasions if there are special reasons therefor.

10. Where information is not supplied within the time limits set by the Commission, or where the investigation is significantly impeded, the Commission may make findings on the basis of the facts available. Where the Commission finds that any interested party or any third party has supplied it with false or misleading information, it shall disregard that information and may make use of the facts available.

11. The Commission shall notify ►**M1** Colombia, Ecuador or Peru ◄ in writing of the initiation of an investigation and of the imposition of provisional or definitive safeguard measures.

Article 6

Prior surveillance measures

1. The Commission may adopt prior surveillance measures in regard to imports from ►**M1** Colombia, Ecuador or Peru ◄ where:

(a) the trend in imports of a product is such that it could lead to one of the situations referred to in Articles 2 and 4; or

(b) there is a surge of imports of bananas concentrated in one or several Member States, or in one or several of the Union's outermost regions.

2. The Commission shall adopt prior surveillance measures in accordance with the advisory procedure referred to in Article 14(2).

3. Prior surveillance measures shall have a limited period of validity. Unless otherwise provided, they shall cease to be valid at the end of the second six-month period following the first six months after their introduction.

Article 7

Imposition of provisional safeguard measures

1. Provisional safeguard measures shall be applied in critical circumstances where a delay would cause damage which would be difficult to repair, pursuant to a preliminary determination on the basis of the factors referred to in Article 5(5) that there is sufficient prima facie

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evidence that imports of a product originating in ►M1 Colombia, Ecuador or Peru ◄ have increased as a result of the reduction or elimination of a customs duty in accordance with the Tariff Elimination Schedule, and such imports cause serious injury, or threat thereof, to the Union industry.

The Commission shall adopt provisional safeguard measures in accordance with the advisory procedure referred to in Article 14(2). In cases of imperative grounds of urgency, including the case referred to in paragraph 2 of this Article, the Commission shall adopt immediately applicable provisional safeguard measures in accordance with the procedure referred to in Article 14(4).

2. Where a Member State requests immediate intervention by the Commission and where the conditions set out in paragraph 1 are met, the Commission shall take a decision within five working days of receiving the request.

3. Provisional safeguard measures shall not apply for more than 200 calendar days.

4. Should the provisional safeguard measures be repealed because the investigation shows that the conditions set out in Article 2(1) are not met, any customs duty collected as a result of those provisional safeguard measures shall be refunded automatically.

5. Provisional safeguard measures shall apply to every product which is put into free circulation after the date of entry into force of those measures. However, such measures shall not prevent the release for free circulation of products already on their way to the Union where the destination of such products cannot be changed.

Article 8

Termination of investigations and proceedings without measures

1. Where the facts as finally established show that the conditions set out in Article 2(1) are not met, the Commission shall adopt a decision terminating the investigation and proceeding in accordance with the examination procedure referred to in Article 14(3).

2. The Commission shall make public, with due regard to the protection of confidential information within the meaning of Article 12, a report setting out its findings and reasoned conclusions reached on all pertinent issues of fact and law.

Article 9

Imposition of definitive safeguard measures

1. Where the facts as finally established show that the conditions set out in Article 2(1) are met, the Commission shall invite the authorities of ►M1 Colombia, Ecuador or Peru ◄ to hold consultations in accordance with Article 49 of the Agreement. Where no satisfactory solution has been reached within 45 days, the Commission may adopt a decision imposing definitive safeguard measures in accordance with the examination procedure referred to in Article 14(3).

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2. The Commission shall make public, with due regard to the protection of confidential information within the meaning of Article 12, a report containing a summary of the material facts and considerations relevant to the determination.

Article 10

Duration and review of safeguard measures

1. A safeguard measure shall remain in force only for such period of time as may be necessary to prevent or remedy the serious injury to Union industry and to facilitate adjustment. That period shall not exceed two years, unless it is extended under paragraph 3.

2. A safeguard measure shall remain in force, pending the outcome of the review under paragraph 3, during any extension period.

3. The initial period of duration of a safeguard measure may exceptionally be extended by up to two years provided that the safeguard measure continues to be necessary to prevent or remedy serious injury to Union industry and to facilitate adjustment, and that there is evidence that the Union industry is adjusting.

4. Any extension pursuant to paragraph 3 of this Article shall be preceded by an investigation upon a request by a Member State, by any legal person or any association not having legal personality acting on behalf of the Union industry, or on the Commission's own initiative if there is sufficient prima facie evidence that the conditions laid down in paragraph 3 of this Article are met, on the basis of factors referred to in Article 5(5).

5. The initiation of an investigation shall be published in accordance with Article 4(6) and (7). The investigation and any decision regarding an extension pursuant to paragraph 3 of this Article shall be made in accordance with Articles 5, 8 and 9.

6. The total duration of a safeguard measure shall not exceed four years, including any provisional safeguard measure.

7. A safeguard measure shall not be applied beyond the expiry of the transitional period.

8. No safeguard measure shall be applied to the import of a product that has previously been subject to such a measure, except for one time for a period of time equal to half of that during which such measure had been previously applied, provided that the period of non-application is at least one year.

Article 11

Outermost regions of the Union

Where any product originating in ►**M1** Colombia, Ecuador or Peru ◄ is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic

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situation of one or several of the Union's outermost regions, as referred to in Article 349 TFEU, a safeguard measure may be imposed, in accordance with this Chapter.

Article 12

Confidentiality

1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

2. Neither information of a confidential nature nor any information provided on a confidential basis received pursuant to this Regulation shall be disclosed without the express consent of the supplier of such information.

3. Each request for confidentiality shall state the reasons why the information is confidential. However, if the supplier of the information requests that the information is not made public or disclosed, in full or in summary form, and if that request is unjustified, the information concerned may be disregarded.

4. Information shall in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

5. Paragraphs 1 to 4 shall not preclude reference by the Union authorities to general information and in particular to reasons on which decisions taken pursuant to this Regulation are based. Those authorities shall, however, take into account the legitimate interest of natural and legal persons concerned that their business secrets should not be divulged.

Article 13

Report

1. The Commission shall submit an annual report to the European Parliament and to the Council on the application, implementation and fulfilment of obligations of the Agreement and of this Regulation.

2. The report shall include information about the application of provisional and definitive measures, prior surveillance measures, regional surveillance and safeguard measures and the termination of investigations and proceedings without measures.

3. The report shall include information on the activities of the various bodies responsible for monitoring the implementation of the Agreement, including on fulfilment of obligations under Title IX of the Agreement and on activities with civil society advisory groups.

4. The report shall set out a summary of the statistics and the evolution of trade with ►M1 Colombia, Ecuador and Peru ◄ and shall include up-to-date statistics on banana imports from ►M1 Colombia, Ecuador and Peru ◄.

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5. The European Parliament may, within one month of submission of the Commission's report, invite the Commission to an ad hoc meeting of its responsible committee to present and explain any issues related to the implementation of this Regulation.

6. No later than three months after submitting its report to the European Parliament and to the Council, the Commission shall make it public.

Article 14

Committee procedure

1. The Commission shall be assisted by the Committee established by Article 4(1) of Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports ([1]) ('the Committee'). The Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 4 thereof, shall apply.

5. The Committee may examine matters relating to the application of this Regulation, raised by the Commission or at the request of a Member State. Member States may request information and may exchange views in the Committee or directly with the Commission.

CHAPTER II

STABILISATION MECHANISM FOR BANANAS

Article 15

Stabilisation mechanism for bananas

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1. For bananas originating in Colombia, Ecuador or Peru falling under heading 0803 90 10 of the Combined Nomenclature (fresh bananas, excluding plantains) and listed under the staging category 'BA' in the Tariff Elimination Schedule in the case of Colombia and Peru and staging category 'SP1' in the Tariff Elimination Schedule in the case of Ecuador under the heading 0803 00 19, a stabilisation mechanism shall apply until 31 December 2019.

2. A separate annual trigger import volume is set for imports of products referred to in paragraph 1, as indicated in the second, third and fourth columns of the table in the Annex. Once the trigger volume for Colombia, Ecuador or Peru is met during the corresponding calendar year, the Commission shall, in accordance with the urgency procedure

([1]) OJ L 84, 31.3.2009, p. 1.

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referred to in Article 14(4), adopt an implementing act by which it shall either temporarily suspend the preferential customs duty applied to products of the corresponding origin during that same year for a period of time not exceeding three months, and not going beyond the end of the calendar year, or determine that such suspension is not appropriate.

2a. When import volumes reach 80 % of the trigger import volume, as indicated in the Annex to this Regulation, for one or more of the parties to the Agreement, the Commission shall formally alert the European Parliament and the Council in writing. At the same time, the Commission shall transmit to the European Parliament and the Council the relevant information on the trends in bananas and import statistics concerning the imports from the countries subject to the stabilisation mechanism and their relevant thresholds, in order to anticipate import trends over the rest of the calendar year.

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3. When deciding whether measures should be applied pursuant to paragraph 2, the Commission shall take into consideration the impact of the imports concerned on the situation of the Union market for bananas. That examination shall include factors such as: effect of the imports concerned on the Union price level, development of imports from other sources, overall stability of the Union market.

4. Where the Commission decides to suspend the preferential customs duty applicable, it shall apply the lesser of the base rate of customs duty or the MFN rate of duty in application at the time such action is taken.

5. Where the Commission applies the actions referred to in paragraphs 2 and 4, it shall immediately enter into consultations with the affected country or countries to analyse and evaluate the situation on the basis of available factual data.

6. The application of the stabilisation mechanism for bananas set out in this Chapter is without prejudice to the application of any measures defined in Chapter I. Measures taken pursuant to the provisions of both chapters shall not, however, be applied simultaneously.

7. The measures referred to in paragraphs 2 and 4 shall be applicable only during the period ending on 31 December 2019.

CHAPTER III

IMPLEMENTING RULES

Article 16

Implementing rules

The applicable provision for the purposes of adopting the necessary implementing rules for the application of the rules contained in Appendices 2A and 5 of Annex II (Concerning the definition of the concept of ‘Originating Products’ and methods of administrative co-operation) and Appendix 1 (Elimination of Customs Duties) of Annex I to the Agreement shall be Article 247a of Regulation (EEC) No 2913/92.

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CHAPTER IV

FINAL PROVISIONS

Article 17

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the date of application of the Agreement as provided for in Article 330 thereof. A notice shall be published in the *Official Journal of the European Union* specifying the date of application of the Agreement.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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ANNEX

Table regarding trigger import volumes for the application of the stabilisation mechanism for bananas provided for in Section B of Appendix 1 of Annex I to the Agreement: for Colombia, Subsection 1; for Peru, Subsection 2; and for Ecuador, Subsection 3.

Year	Trigger import volume for Colombia, in metric tonnes	Trigger import volume for Peru, in metric tonnes	Trigger import volume for Ecuador, in metric tonnes
From 1 January until 31 December 2017	1 822 500	93 750	1 801 788
From 1 January until 31 December 2018	1 890 000	97 500	1 880 127
From 1 January until 31 December 2019	1 957 500	101 250	1 957 500
As from 1 January 2020	Not applicable	Not applicable	Not applicable

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COMMISSION STATEMENT

The Commission welcomes the first reading agreement between the European Parliament and the Council on Regulation (EU) No 19/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part [1].

As envisaged in Regulation (EU) No 19/2013, the Commission will submit an annual report to the European Parliament and to the Council on the implementation of the Agreement and will be ready to discuss with the responsible committee of the European Parliament any issues arising from the implementation of the Agreement.

The Commission will attach particular importance to the effective implementation of commitments on trade and sustainable development in the Agreement, taking into account the specific information provided by the relevant monitoring bodies of the fundamental Conventions of the International Labour Organisation and the multilateral environmental agreements listed in Title IX of the Agreement. In this context, the Commission will also seek the views of the relevant civil society advisory groups.

After the expiry of the stabilisation mechanism for bananas on 31 December 2019, the Commission will assess the situation of the Union market for bananas and the state of Union banana producers. The Commission will report its findings to the European Parliament and to the Council and will include a preliminary assessment of the functioning of the 'Programme d'Options Spécifiques à l'Éloignement et l'Insularité' (POSEI) in preserving the banana production in the Union.

[1] See page 1 of this Official Journal.

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JOINT DECLARATION

The European Parliament and the Commission agree on the importance of close cooperation in monitoring the implementation of the Agreement and Regulation (EU) No 19/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part [1]. To that end they agree on the following:

— Upon request by the responsible committee of the European Parliament, the Commission shall report to it on any specific concerns relating to the implementation by Colombia or Peru of their commitments on trade and sustainable development.

— If the European Parliament adopts a recommendation to initiate a safeguard investigation, the Commission will carefully examine whether the conditions under Regulation (EU) No 19/2013 for *ex-officio* initiation are fulfilled. If the Commission considers that the conditions are not fulfilled, it will present a report to the responsible committee of the European Parliament including an explanation of all the factors relevant to the initiation of such an investigation.

[1] See page 1 of this Official Journal